REMARKS

Claims 1-19 are pending in the present application. Applicants have noted and carefully studied the Examiner's comments and the cited art. Applicants respectfully traverse the rejections and request reconsideration. Applicants believe that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested.

Claims 1-19

The Office Action has rejected claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over Lappanen in view of Hoffman.

Lappanen

Applicants submit that Lappanen discloses a system for upgrading software in a mobile telephone, (title). Such system discloses the "upgrading of software, especially of speech coding software in mobile telephones" (pg. 1, lns. 3-5). More specifically, Lappanen discloses that "[i]n some embodiments ... executable code is transferred to a mobile station. In the second embodiments, the program best corresponding to the prevailing conditions is selected from the software preinstalled in the mobile station. In a third embodiments, the preinstalled and externally loaded software modules cooperate in such a manner that at least parts of each are executed." (pg. 1 ln. 30 – pg. 2, ln. 2). Lappanen also discloses that "[o]ne of the parts [of a program] P1 to P3 can be replaced by a corresponding part in the RAM so that a jump to the replaced part of the program is written in the place of the ump instruction in the RAM," (pg. 9, lns. 17-20).

Hoffman

Applicants submit that Hoffman discloses a system for over the air programming and/or service activation, (title). Such system discloses where "the end user selects a desired feature or

set of features and contacts a service provider. .... The user obtains software programming from the service provider, which is then loaded into the memory of the terminal device" (pg. 2, lns. 25-32). Hoffman also discloses: "a module may remain [in memory] unchanged for the useful life of the terminal device 5. Most often, the methodology entails replacing a module ... only when the subscriber desires to purchase a new module, either as a feature upgrade or to replace an old feature with a new feature. Consequently, the feature downloads tend to occur when the subscriber first purchases a new terminal device and infrequently thereafter," (col 7, lns. 1-9).

<u>Independent Claim 1</u>

Applicants submit that neither Lappanen nor Hoffman, whether considered alone or in combination, disclose, teach or suggest Applicants' claimed subject matter including, inter alia, "... installing a recall program in the storage, the recall program comprising a program ... to automatically uninstall <u>one or more application programs</u> contained in the storage responsive the telephone detecting a remote recall command," (claim 1).

Acknowledgement Of What Lappanen Doesn't Disclose, Teach or Suggest

First, Applicants acknowledge the Office Actions' statement that "Leppanen fails to disclose providing wireless telephone circuitry."

Lappanen's Replacement Of Programs Parts Is Not A Recall Program To Automatically Uninstall One Or More Applicatoins

Applicants submit that Lappanen is wholly absent any discussion of the installing a recall program in the storage, the recall program comprising a program ... to automatically <u>uninstall one or more application programs</u> contained in the storage responsive the telephone detecting a remote recall command. Instead, Lappanen is rather directed to a system where portions of an existing program can be replaced without effecting the other portions, (pg. 9, ln. 6 – pg. 10, ln.

3

8). More specifically, Goodman discloses that "[o]ne of the parts [of the program] P1 to P3 can be replaced by a corresponding part in the RAM so that a jump to the replaced part of the program is written in the place of the ump instruction in the RAM," (pg. 9, lns. 17-20). As such, Applicants submit that not only does Lappanen not disclose, teach or suggest, whether considered alone or in combination with Hoffman, the uninstallation of one or more application programs, but, Lappanen in fact teaches away from such functionality by indicating maintain existing programs while simply upgrade portions thereof as needed.

Hoffman's Replacement Of Programs Teaches Away From A Recall Program To Automatically Uninstall One Or More Applicatoins

Applicants submit that Hoffman teaches away from installing a recall program in the storage, the recall program comprising a program ... to automatically uninstall one or more application programs contained in the storage responsive the telephone detecting a remote recall command. Instead, Hoffman discloses that a "module may remain [in memory] unchanged for the useful life of the terminal device 5. Most often, the methodology entails replacing a module ... only when the subscriber desires to purchase a new module, either as a feature upgrade or to replace an old feature with a new feature. Consequently, the feature downloads tend to occur when the subscriber first purchases a new terminal device and infrequently thereafter," (col 7, lns. 1-9). As such, Applicants submit that not only does Hoffman not disclose, teach or suggest, whether considered alone or in combination with other cited art, the uninstallation of one or more application programs, but, Hoffman in fact teaches away from such functionality by indicating the general lack of need to uninstall a program where updates to the phone generally when a subscriber first purchases a new device, and also teaches away by simply referring to replacement of modules rather than a need to uninstall any such items.

4

Obviousness Requirements Not Met

Applicants respectfully note that in order for prior art references to be combined by obviousness, at a minimum, there must be a suggestion of desirability for the modification. Applicants submit that neither Lappanen nor Hoffman disclose, teach or suggest the desirability for modification, explicit or otherwise. In addition, there must be a teaching or suggestion to make the combination and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. Further, Applicants note that the level of skill in the art cannot be relied upon to provide the suggestion to combine references. Additionally, since none of the cited references disclose, teach or suggest "... installing a recall program in the storage, the recall program comprising a program ... to automatically uninstall one or more application programs contained in the storage responsive the telephone detecting a remote recall command," (claim 1), the combination of any of the cited references cannot produce the Applicants' invention as claimed.

Further, Applicants respectfully submit that the Office Action uses improper hindsight reasoning by suggesting it would have been obvious to modify the cited to references to achieve Applicants' claimed subject matter, where the Office Action, using impermissible hindsight, bases such arguments only upon the teaching or suggestion within Applicants' own disclosure. Applicants submit that there must be some suggestion or motivation, either in the reference itself, or in the knowledge of generally available to one of ordinary skill in the art, to modify the reference as described. Further, to the extent that the Office Action relies on a position that modifications of the cited art to meet the claimed invention would have been within the ordinary skill of the art at the time Applicants' invention was made, because the references, and/or the knowledge of one skilled in the art, were individually known to those of skilled in the art, is not sufficient to establish a prima facie case of obviousness without some objective reason to

5

combine the teachings of the references. Applicants submit that if one of ordinary skill in the art, at the time of Applicants' invention, were to read Lappanen and/or Hoffman, such a person would not be in possession of Applicants' claimed subject matter.

Dependent Claims 2-3

Applicants submit that as direct or indirect dependent claims of parent claim 1, dependent claims 2 and 3 are allowable for at least the reasons that the parent claim is allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the parent claim.

Independent Claim 4

Applicants submit that neither Lappanen nor Hoffman, whether considered alone or in combination, disclose, teach or suggest Applicants' claimed subject matter including, inter alia, "... the recall program automatically uninstalling one or more application programs contained in the storage responsive the telephone detecting a remote recall command," (claim 4).

Further, Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 4 is also allowable. Applicants also further emphasize the replacement operations of both Lappanen and Hoffman are absent any disclosure, teaching or suggestion of the use of a remote call command, as both are directed to the replacement of program code rather than the uninstallation of such code. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

6

Dependent Claims 5-9

Applicants submit that as direct or indirect-dependent claims of parent claim 4, dependent claims 5-9 are allowable for at least the reasons that the parent claim is allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the parent claim.

Independent Claim 10

Applicants submit that neither Lappanen nor Hoffman, whether considered alone or in combination, disclose, teach or suggest Applicants' claimed subject matter including, inter alia, "... identifying any application programs for which certain recall criteria apply; identifying wireless telephones having the identified application programs installed thereon; constructing recall commands specifying the identified application programs and including instructions to uninstall the identified application programs; sending the recall commands to the identified wireless telephones via one or more wireless networks," (claim 10).

Further, Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 10 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Dependent Claim 11

Applicants submit that as dependent claim of parent claim 10, dependent claim 11 is allowable for at least the reasons that the parent claim is allowable. Applicants further submit that such dependent claim is also allowable in light of the presence of novel and non-obvious elements contained in the dependent claim that is not otherwise present in the parent claim.

7

Independent Claim 12

Applicants submit that Lappanen does not disclose, teach or suggest Applicants' claimed subject matter including, inter alia, "... a recall program comprising a program of machine-readable instructions executable by the processing circuitry to perform operations to automatically uninstall one or more application programs contained in the storage responsive the telephone detecting a remote recall command," (claim 12).

Further, Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 12 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Dependent Claims 13-19

Applicants submit that as direct or indirect dependent claims of parent claim 12, dependent claims 13-19 are allowable for at least the reasons that the parent claim is allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the parent claim.

8

CONCLUSION

In light of the arguments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: October 27, 2004

By: _____
Brent A. Boyd
Reg. No. 51,020
(858) 651-4567

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Telephone: (858) 658-5787
Facsimile: (858) 658-2502

9